

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2028

Heard at Montreal, Tuesday, 12 June 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

DISPUTE:

Appeal of the Company's decision to decline Locomotive Engineer B.A. Shaw's request to rescind his resignation.

JOINT STATEMENT OF ISSUE:

At approximately 1045 hours on March 8, 1989, Locomotive Engineer B.A. Shaw of Kamloops, B.C., was hand delivered written notices advising that he was being held out of service pending an investigation into a delay to Train 759 and his alleged conduct unbecoming an employee of the Company.

At approximately 1145 hours, on March 8, 1989, Mr. Shaw notified the Company of his intention to resign and requested that a Resignation Notice and any other required documentation be prepared for his signature. At approximately 1415 hours, after returning property belonging to the Company, Mr. Shaw signed Resignation Notice Form CN 92-B.

At approximately 1330 hours on March 9, 1989, Mr. Shaw met with the Superintendent at Kamloops and asked to withdraw his Resignation Notice. His request was declined.

The Brotherhood contends that Locomotive Engineer Shaw's troubled state of mind influenced his decision to resign and as such was an involuntary resignation from the Company.

The Company disagrees.

FOR THE BROTHERHOOD:
(SGD) D. S. KIPP
GENERAL CHAIRPERSON

FOR THE COMPANY:
(SGD) M. DELGRECO
for: ASSISTANT VICE-PRESIDENT
LABOUR RELATIONS

There appeared on behalf of the Company:

L. A. Harms -- System Labour Relations Officer, Montreal

P. D. Morrissey -- Manager, Labour Relations, Montreal
R. Paquette -- System Labour Relations Officer, Montreal
M. Fisher -- Co-Ordinator, Transportation, Montreal
K. G. MacDonald -- Manager, Labour Relations, Edmonton

And on behalf of the Brotherhood:

D. S. Kipp -- General Chairman, Kamloops
B. A. Shaw -- Grievor

AWARD OF THE ARBITRATOR

On a review of the material the Arbitrator is satisfied that Mr. Shaw did not make a deliberate and considered decision when he purported to resign on March 9, 1989. It does not appear disputed that when he was served with notice of an impending disciplinary investigation he had slept for only two hours in the previous thirty-six, and that he was under considerable personal stress as a result of a serious terminal illness in his family. The evidence discloses, moreover, that he had no independent advice with respect to his circumstances, or the options available to him. The fact that, within less than twenty-four hours, he sought to undo his action, is in my view indicative that his first action was reactive and compulsive, rather than considered and deliberate.

The Arbitrator therefore concludes that the Company was not entitled to consider the grievor as having resigned. In the circumstances, however, two points of clarification must be made. The first is that by notifying the Company that he intended to resign, and thereafter by signing a resignation document, Mr. Shaw became the author of his own misfortune in respect of any loss of wages or benefits which may have resulted from his actions. This is not, therefore, an appropriate case for an order in respect of compensation. Secondly, the Brotherhood accepts, as in the Arbitrator's view it must, that the grievor's actions cannot shelter him from the disciplinary procedures that were outstanding at the time of his purported resignation in March of 1989. His reinstatement into employment is, therefore, conditioned upon the Brotherhood's agreement that the Company remains fully entitled to exercise its rights in respect of the investigation which was pending at the time.

For the foregoing reasons the grievance is allowed, in part. Mr. Shaw shall be reinstated into his employment, with the status of an employee held out of service pursuant to the notice delivered to him on March 8, 1989, without compensation or benefits and without loss of seniority.

June 15, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR